

The Honorable Thomas S. Zilly

CC TO JUDGE / DJ

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JUL 26 2001 DJ

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MUIO TRAN, KIM-CUC NGUYEN, NHU  
HUU TRAN, a minor child, LOAN HUU  
TRAN, a minor child,

Plaintiffs,

v

THE CITY OF SEATTLE, a local municipal  
corporation; PAUL SCHELL, mayor of the  
City of Seattle; GIL KERLIOWSKI, Police  
Chief of the City of Seattle, KIRK M  
WALDORF, # 6311; ALVIN F. LITTLE, #  
4843; JOHN S. VRADENBURG, # 5853,  
NICHOLUS J. BAUER, # 5824; ROBERT E  
WHITE, # 5484, ROBERTO V. SABAY, #  
5472, EUGENE FOSTER, # 5844,  
MICHAEL R. GRIFFIN, # 5875; DANIEL J  
BESTE, # 3295; KENNETH E. HICKS, #  
4559; TRUNG H. NGUYEN, # 5999,  
ROBERT R. CIERLEY, # 6216, KATHLEEN  
A. GRAVES, # 6232, ARRON D.  
SAUSAMAN, # 6089, TODD C. HARRIS, #  
6221; JOHNEY STEVENS, # 5072, BRUCE  
A. WIND, # 3995, DOUGLAS A. KITTS, #  
4744, each individually and each in their  
official employment capacity as Seattle  
Police Officers,

Defendants.

No. C01-1081-Z

ANSWER

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CV 01-01081 #00000006

ANSWER - 1

STAFFORD FREY COOPER

Professional Corporation  
ATTORNEYS

2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
TELEPHONE (206) 623-9900

ORIGINAL

**I. ANSWER**

Defendants answer as follows:

**A. Allegations contained in the document entitled "Parties."**

1 Paragraphs 1.1-1.4 are denied for lack of information

2. To the extent that paragraph 1.5 contains any allegation, such allegations are denied.

3. Answering paragraph 1.6, defendants admit that the City of Seattle ("the City") is a local municipality and that the Seattle Police Department is a city agency. Defendants deny all remaining allegations.

4. Answering paragraph 1.7, defendants admit that Mayor Paul Schell, at all times relevant, is the duly elected mayor of the City and that Mayor Schell has fulfilled his responsibilities acting as such. Defendant further admit that plaintiffs have sued Mayor Schell in his official capacity, but deny that the claims are legitimate. Defendants deny all remaining allegations.

5. Answering paragraph 1.8, Defendants admit that Gil Kerlikowski is presently the Police Chief of the Seattle Police Department and that plaintiffs have sued him in his official capacity. Defendants deny all remaining allegations. Defendants further deny that Chief Kerlikowski was acting chief of police during the time frame alleged in this complaint.

6. Answering paragraph 1.9, defendants admit that plaintiffs have sued the individuals named in this paragraph in their official capacities. Defendants further admit that these officers may have been employed by the Seattle Police Department during the time frame of the incident underlying this complaint and were acting within the course and

ANSWER - 2

STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
TELEPHONE (206) 623-9900

1 scope of their respective employment as police officers. Defendants deny all remaining  
2 allegations.

3 **B. Allegations contained in the document entitled "Jurisdiction and Venue."**

4 1 Answering Section I, entitled "Jurisdiction," defendants deny that the events  
5 alleged occurred, but admit that jurisdiction would be proper.

6 2 Answering Section II, entitled "Venue," defendants deny that the events  
7 alleged occurred, but admit that venue would be proper.

8 **C. Allegations contained in the document entitled "Factual Allegations."**

9 1 Answering Section I, entitled "Factual Allegations," defendants admit that the  
10 plaintiff refers to municipal officials and employees collectively as the City in their  
11 complaint. Defendants deny all remaining allegations, including any allegations contained  
12 in the heading.

13 2. Answering Section II, entitled "Retaliation against People who Engage in  
14 Constitutionally[-]Protected Speech or Conduct," defendants deny all allegations, including  
15 any allegations contained in the heading

16 3 Answering Section III, entitled "Summary Punishment of Citizens who Offend  
17 Police Officers," defendants deny paragraphs 1 and 2 To the extent that the third  
18 paragraph or the heading contains any allegations against them, defendants deny these  
19 allegations as well

20 4 Answering Section IV, entitled "Initiation of False and Malicious Prosecutions  
21 to Cover-Up Police Misconduct," and Section V, entitled "Code of Silence," defendants  
22 deny all allegations, including any allegations contained in the headings

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ANSWER - 3

STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
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1 **D. Allegations contained in the document entitled "Complaint: Violation of**  
2 **Plaintiffs[] First, Fourth, Eighth, Thirteenth, Fourteenth Federal Constitutional**  
3 **Rights; Assault; False Arrest; False Imprisonment; International [sic] and**  
4 **Negligent Infliction of Emotional Distress and Violation of Miranda."**

5 1 Answering paragraph 1.1, defendants admit that Seattle Police Officers Kirk  
6 Waldorf's and Alvin Little's investigation of a hit and run accident brought them to a house  
7 where plaintiffs were located Defendants deny for lack of information whether the house  
8 was plaintiffs' residence. Defendants deny all remaining allegations

9 2. Answering paragraph 1.2, defendants admit that Mr Tran answered the door  
10 and that Officers Little and Waldorf asked Mr Tran for permission to enter the house  
11 Defendants deny all remaining allegations for lack of information.

12 3. Answering paragraph 1 3, defendants admit that Mr Tran gave Officers Little  
13 and Waldorf permission to enter the house and that one of the officers asked Mr Tran if he  
14 had a son and, if so, where that son was then Defendants deny all remaining allegations

15 4 Answering paragraph 1.4, defendants admit that the son did come downstairs  
16 to talk with the police officers at Mr Tran's prompting Defendants deny for lack of  
17 information that the home belonged to Kim-Cuc Nguyen Defendants deny all remaining  
18 allegations

19 5 Answering paragraph 1.5 - 1.9, defendants deny the same.

20 6. Answering paragraph 1 10, defendants admit that Muio Tran was placed  
21 under arrest for violating several state and municipal laws Defendants admit that Muio  
22 Tran did not require any form of medical treatment. Defendants deny all remaining  
23 allegations

24 ANSWER - 4

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STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
TELEPHONE (206) 623-9900

1           7.     Answering paragraph 1.11, the first and last sentences appear to be  
2 fragments and are vague, ambiguous, and unintelligible. Defendants therefore deny the  
3 same for lack of information. Defendants admit that several Seattle Police Officers  
4 responded to calls for back up. Whether these officers are named in this lawsuit is  
5 presently unknown. Defendants therefore deny any allegation to this effect for lack of  
6 information. Defendants deny any remaining allegations.

8           8.     Answering paragraphs 1.12 - 1.22, defendants deny the same.

9           9.     Answering the section entitled "Police-Citizenship Encounter," the first  
10 paragraph is vague, ambiguous, and unintelligible; defendants therefore deny it for lack of  
11 information. Defendants deny all allegations contained in the second and third paragraphs  
12 of this section as well as any allegation contained in the heading.

13           10.    Answering the section entitled "False Arrest/False Imprisonment," defendants  
14 deny all allegations contained in the first four paragraphs and any allegation that may be  
15 contained in the heading. Defendants also deny the last paragraph in this section. To the  
16 extent that the remaining paragraphs contain any allegations against them, defendants  
17 deny the same.

18           11    Answering the section entitled "Negligence in Training, Supervising, and  
19 Discipline," defendants deny all allegations contained therein, including any allegation that  
20 may be contained in the heading.

21           12.    Answering the section entitled "Malicious Prosecution," defendants admit that  
22 Muo Tran and Kim-Cuc Nguyen were arrested with probable cause. Defendants deny for  
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ANSWER - 5

STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
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1 lack of information whether the house was plaintiff's home. Defendants deny all remaining  
 2 allegations, including those that may be contained in the heading

3 13 Answering the section entitled "Intentional Infliction of Emotional Distress,"  
 4 defendants admit that two of the plaintiffs were arrested with probable cause. Defendants  
 5 deny for lack of information whether the house was plaintiff's home. Defendants deny all  
 6 remaining allegations, including those that may be contained in the heading

8 14 Answering the section entitled "Civil Rights Title U S C § 1983," defendants  
 9 deny for lack of information that plaintiffs were at their home, that plaintiffs were "enjoying"  
 10 anything, and that plaintiffs are free citizens of the United States of America Defendants  
 11 admit that Officers Waldorf and Little came to where the plaintiffs were located.  
 12 Defendants deny all remaining allegations, including those that may be contained in the  
 13 heading.

15 15. Answering the sections entitled "Proximate Cause of Action," "Color of State  
 16 Law," "First Cause of Action," "Second Cause of Action," "Third Cause of Action," "Fourth  
 17 Cause of Action," "Fifth Cause of Action," "Sixth Cause of Action," "Seventh Cause of  
 18 Action," "Eighth Cause of Action, " "Ninth Cause of Action," "Tenth Cause of Action, "  
 19 "Eleventh Cause of Action," and "Relief," defendants deny all allegations contained therein,  
 20 including those that may be contained in the heading and subheadings.

22 16 Defendants admit that plaintiffs have demanded trial by jury

## 23 II. AFFIRMATIVE DEFENSES

24 By way of further answer and affirmative defense, defendants allege as follows:

26 ANSWER - 6

STAFFORD FREY COOPER  
 —Professional Corporation—  
 ATTORNEYS  
 2500 RAINIER TOWER  
 1301 FIFTH AVENUE  
 SEATTLE, WASHINGTON 98101-2621  
 TELEPHONE (206) 623-9900

1           1.     Plaintiffs Nhu Huu Tran and Loan Huu Tran are minor children and do not  
2 have capacity to sue.

3           2     Plaintiffs have failed to satisfy a condition precedent by failing to file a claim  
4 with the City as required by Seattle Municipal Code 5.24.005 and RCW 4 96 020.

5           3     Plaintiffs' process and service of process is insufficient as to all defendants.

6           4.     This action is premature.

7           5     Plaintiffs failed to allege a claim against any defendant upon which relief can  
8 be granted.

9           6.     Individual defendants were, at all relevant times, acting in good faith and  
10 working within the course and scope of their duties, and with a reasonable belief that their  
11 actions were lawful and proper. They are therefore entitled to absolute and/or qualified  
12 and/or discretionary immunity.

13           7.     If plaintiffs sustained any injuries or damages, which defendants categorically  
14 deny, those injuries or damages were caused or contributed to by others than the named  
15 defendants over whom the defendants have no control and for whom the defendants have  
16 no responsibility. Those claims must therefore be dismissed.

17           8.     If plaintiffs sustained any injuries or damages, which defendants categorically  
18 deny, plaintiffs caused or contributed to those injuries or damages as a result of plaintiffs'  
19 contributory fault and/or willful and/or wanton misconduct. Those claims, in whole or in  
20 part, are therefore barred.

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ANSWER - 7

STAFFORD FREY COOPER  
Professional Corporation  
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2500 RAINIER TOWER  
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SEATTLE, WASHINGTON 98101-2621  
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9. If plaintiffs suffered any damages, which is denied, said damages were caused by their assaulting Officers Little and Waldorf and by their forcibly resisting arrest 10

Defendants had just cause for their actions

11 Defendants' acts were privileged.

12. Plaintiffs bring this suit with unclean hands.

13. This action is frivolous.

14. Plaintiffs have not alleged a claim against the City under 42 U.S.C. § 1983 for which relief may be granted

15. Plaintiffs failed to mitigate their damages, if any

### III. PRAYER FOR RELIEF

Having fully answered the allegations contained in plaintiffs' complaint and accompanying separate documents, defendants request that the court take the following action

1. dismiss plaintiffs' complaint with prejudice,

2. order that plaintiffs' take nothing thereby,

3. require plaintiffs' to pay all of defendants costs, disbursements, and reasonable attorney fees in defending this action,

4. require plaintiffs to pay all of defendants costs disbursements, and reasonable attorneys fees incurred in responding the nearly-identical complaint filed and dismissed in state court under King County Cause Number 01-2-07345-1 SEA pursuant to CR 41;

5. award defendants judgment of dismissal; and

ANSWER - 8

STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
TELEPHONE (206) 623-9900



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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document ***Defendants' Answer to Complaint*** on the following individual(s):

Salah A. Kornas, Esq.  
Law Office of Salah A. Kornas  
600 First Avenue, Suite 514  
Seattle, WA 98104

☐ Via Facsimile  
☐ Via Mail  
☒ Via Messenger

DATED this 26<sup>th</sup> day of July, 2001, at Seattle, Washington

  
\_\_\_\_\_  
MARY ANN JARRETT

ANSWER - 10

STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
TELEPHONE (206) 623-9900